In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "PODER DE DIOS," JULIAN BENGOCHEA et al., claimants.	No. 580.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO Y PACO," ANGEL LOPEZ ET AL., claimants.	No. 581.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ENGRACIA," FRANCISCO GONZALES ET AL., claimants.	No. 582.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SEVERITO," DOMINGO TROCHA ET AL., claimants.	No. 583.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ANTONIO SUAREZ," VILAR, SENRA & CO., claimants.	No. 584.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "FERNANDITO," DOMINGO TROCHA ET AL., claimants.	No. 585.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ORIENTE," MANUEL CARILLO, CLAIMANT.	No. 586.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "ESPAÑA," MANUEL DEUS ET AL., CLAIMANTS.	No. 587.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "CUATRO DE SETIEMBRE," LEONARDO BUNUEL, claimant.	No. 588.
THE UNITED STATES, APPELLANT, v. THE FISHING SMACK "SANTIAGO APOSTOL," CESAR DE LA TORRE, claimant.	No. 589.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF FLORIDA.

BRIEF FOR THE UNITED STATES.

It is not necessary to reargue in these cases the questions of law presented in the *Paquete Habana* and

Lola. There is no difference whatever in principle between those cases and the present group. There are slight differences in the facts depending upon different ownership, tonnage, and condition of the particular vessel, and the evidence upon which the commissioner and the court below reached their findings as to value and damages.

The records, therefore, in the present cases have omitted, under stipulation, all the formal parts which are exactly identical or closely similar to the records in the two leading cases printed in full. Consequently, only those parts of the record herein are printed which relate especially or solely to the particular vessel. It is agreed that reference may be made to the records in the *Paquete Habana* and *Lola* for all omitted portions. There is also a stipulation as to the facts respecting seizure and as to tonnage and cargo in each case.

Following the theory and computation advanced by the Government in its brief in the other two cases, I submit herewith a statement of the proper basis for the allowance of damage as to each vessel, so that the court may itself reform the decree below and enter judgment for such amount of damages in the respective cases as may be just and proper.

"PODER DE DIOS."

The *Podèr de Dios* was seized on May 7, 1898, by the U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 54 feet long, of 56 tons burden, and carried a cargo of 130 quintals of live fish.

(Supplemental stipulated record, p. 1.) The agreed record shows on behalf of claimant an appraised value of $6,500 and the following particular facts: She was built in Nassau, New Providence, and the claimant had known the vessel since October 13, 1897; he thought her net tonnage to be about 51 tons; the claimant states her purchase price as $4,000, to which was added the cost of certain repairs and improvements, bringing her appraised value up to $6,500 (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) considers the owners' value excessive and thinks $2,500 a fair valuation. W. D. Cash (p. 8) paid $1,010, which he considered a fair price for speculation or for the use of the boat in his business; he sold her for $1,500. His partner, W. B. Curry (p. 9), testifies that the vessel was in good condition; that she was put on the ways, cleaned, and painted; that she was worth $2,800, although the firm sold her for $1,500; and according to the reiterated statement in the records that these vessels were all sold back "to people in Havana," probably to her former owners or to parties in their interest, but as that fact is not clear about this boat, the Government accepts this witness's statement of her value as $2,800; the computation then works out as follows:

Value of vessel	$2,800	
Cargo, 130 quintals fish, at $3	390	
		$3,190.00
Less proceeds already returned claimant		660.09

With allowance of interest as indicated in the *Piquete Habana* and *Lola* cases.

"ANTONIO Y PACO."

The *Antonio y Paco* was seized on May 2, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 57 feet long, of 46 tons burden, and carried a cargo of 150 quintals of live fish. (Supplemental stipulated record, p. 2.) The agreed record shows on behalf of claimant an appraised value of $8,250 and the following particular facts: She was built in the United States, and claimant had known the vessel since 1884; he states her net tonnage as 42 tons; the claimant states her purchase price as $6,000, to which was added the cost of certain repairs and improvements, bringing up her appraised value to $8,250 on January 1, 1898 (p. 2). The harbor master, however, is more liberal, and under his formal certificate (p. 9) says that he inspected and valued her on March 1, 1898, at $9,000. This claimant produces extracts (taking the extracts from accounts) showing the earnings and charges on the two-third interest which his firm owned in the vessel.

The Government testimony is as follows: Marshal J. F. Horr (p. 12) says: "Taking into consideration the price that the boats sold for that were taken into Havana [by which he appears to refer to the fact of the resale of these vessels to Havana parties or to claimants themselves], I would consider $3,500 a fair price." He makes this answer believing that this vessel was formerly the *Emma Lowe*, which he believed had cost John Lowe (one of the witnesses) $5,000 or thereabouts to build, and which several years afterwards he

(Lowe) had sold for $3,500. Witness W. D. Cash (p. 12) says that the *Antonio y Paco* was bought by his firm for $1,910 and sold for $2,900 (p. 13). Witness W. B. Curry (p. 14) says that her full value was about $4,000 Taking that value, then, as fairly representing the increase over the price at which she was sold by her former owner, viz, $3,500, because of the repairs and improvements put on her, we have the following statement:

Value of vessel	$3,500	
Cargo, 150 quintals fish, at $3	450	
		$3,950.00
Less proceeds already returned claimant		1,533.29

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ENGRACIA."

The *Engracia* was seized on April 26, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding; she was 60 feet long, of 43 tons burden, and carried a cargo of 120 quintals of fish (supplemental stipulated record, p. 2). The agreed record also shows on behalf of claimant an appraised value of $5,500, and the following particular facts: She was built in the United States and claimant had known the vessel about six years; he believed her net tonnage to be 46 tons or thereabouts; he states her purchase price as $4,500; that she earned on an average on her capital 18 to 22 per cent annually (p. 2); that she was repaired on two occasions, and that the sums expended were less than $1,000 each time; that he does not remember well enough to be more particular, as no

accounts or books of the vessel were kept (p. 3); the vessel was inspected by the harbormaster and valued on March 1, 1898, at $5,500 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (pp. 6, 7) testifies that the vessel sold for $1,000, and that he considers the claimants' valuation of $5,500 excessive. The confusion as to the *Lola Engracia* has been referred to in our main brief; it is evident that the vessel so called in Lowe's testimony refers to the *Engracia* and not to the *Lola;* that the witness bought the *Engracia* for $1,000, found her to be in fair condition, expended about $200 on her, and sold her for $2,000; he thought the price paid by him for the *Engracia* was fair; she was sold "to parties in Havana;" she had been owned in Key West; she was a pretty old vessel—about 15 or 20 years old. The computation works out as follows:

Value of vessel	$2,000	
Less repairs and improvements	200	
	1,800	
Cargo, 120 quintals fish, at $3	360	
		$2,160.00
Less proceeds already returned claimant		617.07

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"SEVERITO."

The *Severito* was seized on May 8, 1898, by U. S. S. *Newport*, Commander B. F. Tilley, U. S. Navy, commanding. She was 50 feet long, of 35 tons burden, and carried a cargo of 50 quintals of live fish. (Supplemental stipulated record, p. 2.) The agreed record

shows on behalf of claimant an appraised value of $8,000, and the following particular facts: She was built in the United States, and claimant had known the vessel six or seven years; he did not remember her tonnage (p. 2). The claimant states that he purchased a one-half interest in this vessel on August 19, 1896, for which he paid $1,500; he states her purchase price as $3,000. Repairs were made on her, which consisted of completely renovating the vessel, putting in new well, planking, rigging, and sails, costing in all about $4,600 (p. 2). She was valued by the harbor master on March 1, 1898, at $8,000 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) says that he considers the claimants' valuation excessive, from her tonnage and her age; that her tonnage could be rebuilt at Key West for much less. Witness M. Curry (p. 7), who purchased her for his firm, paid $1,350 for her and sold her for $3,000. The computation is, then, as follows:

Value of vessel	$3,000	
Cargo, 50 quintals fish, at $3	150	
		$3,150.00
Less proceeds already returned claimant		1,004.26

With allowance of interest as indicated in *Paquete Habana* and *Lola* cases.

"ANTONIO SUAREZ."

The *Antonio Suarez* was seized on May 3, 1898, by U. S. S. *Uncas*, Lieut. F. R. Brainard, U. S. Navy, commanding. She was 54 feet long, of 40 tons burden, and carried a cargo of 50 quintals of fish (supplemental stipulated record, p. 2.) The agreed record

shows on behalf of claimant an appraised value of $9,000, and the following particular facts: She was built in the United States, and claimant had known the vessel since 1884. He thought her net tonnage was about 34.74 tons. Claimant states that "my [his] firm, Vilar, Senra & Co., is the successor of the firm of C. Garcia & Co., and upon its dissolution and liquidation took charge of its business as it stood, and the value or price of the *Antonio Suarez* appeared in the general balance as $10,000 Spanish gold, and was accepted at that price" (p. 3). She usually earned for her owners about 15 to 20 per cent per annum (p. 2). He states that no extensive repairs were made on this vessel from the time she was purchased or transferred to claimant's firm (p. 4). This claimant produces extracts from accounts for the two years next preceding her capture, showing the quantity of fresh and salted fish of her cargo for each trip, and the total amount realized from the sales (p. 5). She was valued on March 1, 1898, by the harbor master, at $9,000 (p. 6).

The Government testimony is as follows: Marshal J. F. Horr (p. 9) says that the vessel was valued at $10,000; he sold her for $1,260, and he considers the claimants' valuation excessive; considering her age and everything, he thinks $3,000 at the outside would be a fair valuation. Witness William Reedy (p. 9), who bought the vessel, made some repairs on her bulwarks and sold her for $2,300; that was the best price he could get; he asked $4,000 but could not get it; he was given to understand that she cost $8,000 before

the war; this is rather uncertain as a basis for opinion, and on the whole as repairs were made, and from what has been said before, it appears that she was sold in the Havana market, the selling price, $2,300, appears to be a fair valuation. The computation is as follows:

Value of vessel	$2,300	
Cargo, 50 quintals fish, at $3	150	
		$2,450.00
Less proceeds already returned claimant		921.75

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"FERNANDITO."

The *Fernandito* was seized on May 7, 1898, by the U. S. S. *Vicksburg*, Commander A. B. H. Lillie, commanding; she was 45 feet long, of 35 tons burden, and carried a cargo of 90 quintals of live fish (supplemental stipulated record, p. 2). The agreed record shows on behalf of claimant an appraised value of $5,500, and the following particular facts: She was built in the United States and claimant was unable to say how long he had known the vessel; claimant states that the vessel was valued at $5,500 when purchased, and that he had a one-half interest in her for which he paid $2,750; he estimates her earning capacity to have been 24 to 28 per cent per annum on her capital (p. 2); he further states that no repairs were made on the vessel since her purchase, beyond painting, replacing cables, etc. (p. 3).

The only reference to the *Fernandito* in the Government testimony is Marshal J. F. Horr's statement

(p. 6), that she brought $500 at the Government sale, and that he does not recall her condition well enough to say whether the claimants' valuation of $5,500 is excessive or not; following the indications as to the other vessels sold at the Government sale for the same amount or thereabouts, it would seem that $2,000 is a very ample allowance for this vessel. The computation is then as follows:

Value of vessel	$2,000	
Cargo, 90 quintals fish, at $3	270	
		$2,270.00
Less proceeds already returned claimant		160.53

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ORIENTE."

The *Oriente* was seized on May 5, 1898, by U. S. S. *Vicksburg*, Commander A. B. H. Lillie, U. S. Navy, commanding. She was 60 feet long, of 45 tons burden, and carried a cargo of 90 quintals of live fish. (Supplemental stipulated record, pp. 2, 3.) The agreed record shows on behalf of claimant an appraised value of $5,000 and the following particular facts: Claimant states that he had known the vessel for about thirty years; that he had purchased her of W. D. Cash, of Key West, some twenty-five years ago; he states her net tonnage as 46.15; claimant states that he paid $1,000; she was repaired on different occasions, aggregating a total of $9,873.31 for said repairs (p. 3); she was valued by the harbor master on March 1, 1898, at $5,000 (p. 5).

The Government testimony is as follows: Marshal J. F. Horr (p. 8) says that the valuation of $5,000 is excessive, but he does not recall her condition at the time well enough to place a valuation on her. Witness Alfred Atchison (p. 8) judges that the *Oriente* was worth about $3,500; that "if the Cuban markets were open to us the vessel was worth more," by which he evidently means more than she brought at the Government sale and on the resale (although her resale does not appear), because on the next page he again fixes her valuation at $2,500 or $3,000, and finally says, "If the market were free to us to sell in Cuba, the vessel would have been worth $2,500, in my opinion." It is this witness who says, in reply to the question "What become of all of these vessels?:" "They were all sold back to the people in Havana." It seems fair and reasonable in the light of this testimony that $3,000 is a liberal allowance for this vessel; and the computation is then as follows:

Value of vessel	$3,000	
Cargo, 90 quintals fish, $3	270	
		$3,270 00
Less proceeds already returned claimant		166 39

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"ESPANA."

The *Espana* was seized on May 7, 1898, by the U. S. S. *Newport*, B. F. Tilley, U. S. Navy, commanding. She was 60 feet long, of 80 tons burden, and carried a cargo of 180 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record

shows on behalf of claimant an appraised value of $9,000, and the following particular facts: The vessel was built at Regla by claimant in 1884; her net tonnage was 51 tons. The claimant states that it cost him about $10,000 to build her, and she was appraised in that amount (p. 2). Repairs were made on the vessel to the extent of $1,800 a few years previous to her capture (p. 3). The claimant estimates her value at the time of capture at $9,000. He states that she usually earned $300 to $350 each trip, after deducting expenses, and that she averaged about one trip per month (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) says that he considers the claimants' valuation excessive; that the *Espana* was a Cuban-built boat, and at the time of sale 14 years of age; he considered $3,000 or $3,500 a fair valuation; she sold at the Government sale for $1,310. Witness Samuel Cates (p. 7) testifies that she was in a pretty bad condition and adds the following significant testimony: In reply to the question whether the price he paid, viz, $1,310, was a fair valuation, he said, "No; I didn't think it was a fair value. I thought the vessel was worth more than she brought. I offered to sell it to the owners for $3,500; they would not give that much money." He was then asked what he did sell it for, to which he replied $2,500; he put repairs on her costing (p. 8) from $150 to $200, and ultimately sold her, as stated, at $2,500, to a former owner. The computation is then as follows:

Value of vessel	$2,500	
Less repairs	150	
	2,350	
Cargo, 180 quintals fish, at $3	540	
		$2,890.00
Less proceeds already returned claimant		953.52

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"CUATRO DE SETIEMBRE."

The *Cuatro de Setiembre* was seized on April 27, 1898, by the U. S. S. *Helena*, Commander W. T. Swinburne, U. S. Navy, commanding. She was 60 feet long, of 30 tons burden, and carried a cargo of 150 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record shows on behalf of claimant an appraised value of $5,000, and the following particular facts: Claimant states that this vessel was formerly the *Maria Madelena*, and was a Cuban-built boat; her net tonnage was 31.5; she was purchased by claimant in 1896 for the sum of $5,000 (p. 2); no repairs to any great extent were made on the vessel after her purchase (p. 3); claimant states that the vessel's annual earnings were estimated at 20 per cent net on the amount of her capital (p. 2).

The Government testimony is as follows: Marshal J. F. Horr (p. 8) says that he would say $1,000, at the outside, was a fair price for the vessel; that he based his estimate upon "her age and condition at the time of sale, and the price that she sold at;" that he thinks she was one of the old boats. (It will be noted that a portion of Horr's testimony in regard to the *Cuatro de Setiembre* is omitted in the agreed record, due to an

error of the clerk of the court below in omitting a page from the transcript of record in this case, and attention is therefore invited to pp. 27 and 28 in the *Lola* record, where this witness's testimony appears in full in regard to this vessel.) Witness John Lowe (p. 9) says that he paid $450 for her, and after her purchase, spent about $200 on her, and sold her for $1,500; he states that the vessel was sold to him cheap, and that a fair estimate of her value before he repaired her was $1,000; he sold her and another vessel "to parties in Havana;" this vessel was about 10 years old; recurring to the *Emma Lowe*, which Horr identified as the *Antonio y Paco*, and which he thought had cost $5,000 or a little more, Lowe himself testifies had cost him about $10,000. The computation is as follows:

Value of vessel	$1,500	
Less amount expended for repairs	200	
	1,300	
Cargo, 150 quintals of fish, at $3	450	
		$1,750.00
Less proceeds already returned claimant		103.67

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

"SANTIAGO APOSTOL."

The *Santiago Apostol* was seized on May 8, 1898, by the U. S. S. *Mayflower*, M. R. S. Mackenzie, U. S. Navy, commanding. She was 78 feet long, of 70 tons burden, and carried a cargo of 190 quintals of live fish. (Supplemental stipulated record, p. 3.) The agreed record shows on behalf of claimant an appraised value of $10,000, and the following particular facts: The vessel was built in the port of Mariel in 1890, under the direction of the claimant. He states

her net tonnage as 90.40 tons, and places her valuation at about $10,000, basing same upon that given by the notarial certificate of her construction and the official certificate of appraisement of $9,980 and some sundry minor expenses made on her, which somewhat increased her value (p. 2). Repairs were made on her in 1894 to the extent of $1,200. Repairs were again made on her in 1897 to the extent of $1,300 (p. 3). She was valued by the harbor master on March 1, 1898, at $10,000 (p. 4).

The Government testimony is as follows: Marshal J. F. Horr (p. 7) testifies that he would consider the valuation of $1,000 excessive; this evidently means $10,000, because he says immediately afterwards that he would consider $5,000 about her value in Key West. Witness Alfred Atchison (p. 8) testifies that he paid $2,700 for her and sold her for $4,000, which he considered a fair price under the circumstances; he found her in good condition, but made some repairs; he sold to parties in Havana under some complication which compelled him to take less than he otherwise could have obtained for her. Having in mind some business, perhaps the fish trade for the Havana market, he testifies that she would be worth about $5,000, which is in accordance with the marshal's testimony. The computation is then as follows:

Value of vessel	$5,000	
Cargo, 190 quintals fish, at $3	570	
		$5,570.00
Less proceeds already returned claimant		2,315.29

With allowance of interest as indicated in the *Paquete Habana* and *Lola* cases.

The amount of damages based upon the foregoing figures, including interest, etc., are not worked out here. The significant thing is to reach a correct basis of value, and therefore of damages.

If the court itself reforms the decrees below or directs their reformation, in accordance with the views as to proper reductions urged by the Government, the full computation presented in the *Paquete* and *Lola* brief offers a guide for determining the due amount in each decree.

The observations of the other brief as to the naval captors' responsibility apply equally here. I submit that on both points the decrees below should be reversed.

HENRY M. HOYT,
Solicitor-General.

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